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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 Timothy Lee Ward,
10 Plaintiff,
11 vs.
12 Terry L. Stewart,
13 Defendant.

No. CV 01-2226-PHX ROS (MS)

ORDER

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15 Pending is Defendant Terry L. Stewart's Motion for Summary Judgment. [Doc. # 67.]
16 For the reasons stated below, Defendant's Motion will be granted in part and denied in part.

17 **BACKGROUND**

18 Unless otherwise noted, the following facts are not contested.

19 Plaintiff Timothy Lee Ward was sentenced to 197 years in an Arizona Department of
20 Corrections ("ADC") facility for twenty-two felony offences, including: child molestation,
21 sexual conduct with a minor, and furnishing obscene material. [Doc. # 68 (Def.'s Statement
22 of Facts ("DSOF")) ¶ 3.] Pursuant to Arizona Revised Statute § 31-237, ADC withholds a
23 total of \$50.00 from a working inmate's wages for the inmate's use upon release from custody
24 ("gate money"). The withholding is deducted from wages earned at a rate of 25 percent.
25 ADC Order Manual § 905.10.1.1.1. Plaintiff has had \$50.00 withheld. [Doc. # 68 (DSOF)
26 ¶ 16.]

27 On November 14, 2001, Plaintiff filed a 42 U.S.C. § 1983 civil rights Complaint after
28 exhausting his administrative remedies. [Doc. # 1.] On August 26, 2002, Plaintiff filed his

1 First Amended Complaint alleging the \$50.00 withholding requirement deprived him of
2 property without due process of law because in light of his lengthy sentence he would never
3 be released from prison. [Doc. # 17.] Additionally, Plaintiff alleged denial of access to
4 courts. [Id.] Plaintiff seeks an injunction prohibiting the continued enforcement of A.R.S.
5 § 31-237 against him, the return of \$50.00 placed in his discharge account, and
6 \$1,000,000.00 in punitive damages. [Id. at 7.]

7 Plaintiff's Complaint was dismissed for failure to state a claim on March 24, 2003.
8 [Doc. # 31.] Plaintiff appealed the dismissal. The Ninth Circuit upheld the dismissal of the
9 access to courts claim but reversed and remanded the due process claim. [Doc. # 35.]
10 Defendant moved for summary judgment on December 17, 2004 and Plaintiff responded on
11 March 30, 2005. [Doc. ## 67 and 84.]

12 DISCUSSION

13 A. Legal Standard for Summary Judgment

14 A court must grant summary judgment if the pleadings and supporting documents,
15 viewed in the light most favorable to the non-moving party, "show that there is no genuine
16 issue as to any material fact and that the moving party is entitled to judgment as a matter of
17 law." Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);
18 Jesinger v. Nev. Fed. Credit Union, 24 F.3d 1127, 1130 (9th Cir. 1994). Substantive law
19 determines which facts are material, and "[o]nly disputes over facts that might affect the
20 outcome of the suit under the governing law will properly preclude the entry of summary
21 judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); see Jesinger, 24 F.3d
22 at 1130. In addition, the dispute must be genuine, that is, "the evidence is such that a
23 reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248.

24 Furthermore, the party opposing summary judgment "may not rest upon the mere
25 allegations or denials of [the party's] pleadings, but . . . must set forth specific facts showing
26 that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); see Matsushita Elec. Indus. Co.,
27 Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986); Brinson v. Linda Rose Joint

1 Venture, 53 F.3d 1044, 1049 (9th Cir. 1995). There is no issue for trial unless there is
2 sufficient evidence favoring the non-moving party; if the evidence is merely colorable or is
3 not significantly probative, summary judgment may be granted. Anderson, 477 U.S. at 249-
4 50. However, because "[c]redibility determinations, the weighing of evidence, and the
5 drawing of inferences from the facts are jury functions, not those of a judge, . . . [t]he
6 evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn
7 in his favor" at the summary judgment stage. Id. at 255 (citing Adickes v. S.H. Kress & Co.,
8 398 U.S. 144, 158-59 (1970)); see Warren v. City of Carlsbad, 58 F.3d 439, 441
9 (9th Cir. 1995).

10 **B. Deprivation of Property Without Due Process**

11 As noted, Arizona Revised Statute § 31-237(A) requires ADC to deduct a percentage
12 of a prisoner's earnings to fund a discharge account payable to the prisoner upon release. The
13 Director of the ADC determines the percentage deducted; however, that percentage cannot
14 be over 30 percent of the prisoner's wages. Id. Once the prisoner's discharge account has
15 reached \$50.00, there are no further deductions. Id. ADC Department Order 905.10.1.1.1
16 provides that 25 percent of an inmate's wages are to be contributed to the discharge account
17 until the balance reaches \$50.00.

18 Arizona Revised Statute § 31-237 has withstood due process attacks. In Zuther v.
19 State, 199 Ariz. 104, 111, 14 P.3d 295, 302 (Ariz. 2000), the Arizona Supreme Court held
20 that "[a]lthough withholding a percentage of wages affects Zuther's property rights in earned
21 wages, he has no constitutional right to possess that property while in prison, and the delay
22 in access to the amount withheld is at most a *de minimus* deprivation." However, as the
23 Ninth Circuit noted in Plaintiff's appeal, Zuther, unlike Plaintiff, was not effectively
24 sentenced to spend the rest of his life in prison.

25 Neither A.R.S. § 31-237 or ADC Department Order 905.10.1.1.1 establish procedures
26 for inmates whose sentence logically exceeds their life expectancy. As such, every inmate
27 is subject to the discharge account withholding. Because Plaintiff is serving a 197-year
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1 sentence and has no expectation of release, he argues that he is effectively being deprived of
2 \$50.00 without due process of law. Defendant argues that Plaintiff is not deprived of his
3 property because the ADC does not keep it forever. Defendant moves for summary judgment
4 based on qualified immunity for personal actions, sovereign immunity for official actions,
5 and failure to state a claim. Each argument is addressed below.

6 **1. Personal Actions and Qualified Immunity**

7 Defendant argues that he is entitled to qualified immunity from suit for personal
8 actions. In order to establish personal liability, Plaintiff must show that the Defendant acted
9 under the color of state law and caused a deprivation of a constitutional or statutory right.
10 Kentucky v. Graham, 473 U.S. 159, 166 (1985). After a plaintiff demonstrates personal
11 liability, a defendant can argue that he has qualified immunity. Id. at 166-67.

12 A two-part test provides whether a defendant is entitled to qualified immunity. First,
13 "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show
14 the officer's conduct violated a constitutional right?" Saucier v. Katz, 533 U.S. 194, 201
15 (2001). If no constitutional right was violated, the defendant has qualified immunity. Id.
16 If a constitutional right was violated by a defendant's personal action, the second step is to
17 ask "whether the right was clearly established." Id. If "it would be clear to a reasonable
18 officer that his conduct was unlawful in the situation he confronted," qualified immunity is
19 not appropriate. Id. at 202.

20 Here, personal liability can be established. Defendant was acting pursuant to A.R.S.
21 § 31-237 and because Plaintiff will effectively be deprived on \$50.00, due process is
22 invoked. However, Defendant is entitled to qualified immunity from personal liability.
23 Assuming, without deciding, that withholding \$50.00 from prisoners whose sentence is
24 longer than their life expectancy is a due process violation, a constitutional right has been
25 violated. However, a reasonable person would not believe that this conduct was unlawful.
26 In his Motion for Summary Judgment, Defendant argues that his enforcement of withholding
27 requirements was based on A.R.S. §31-237, ADC Department Order 905, and Zuther v.
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1 State. Reliance on these elements demonstrates a reasonable belief that Defendant's conduct
2 was lawful. Because Defendant is entitled to qualified immunity, the Court will grant
3 summary judgment on Plaintiff's claims of personal liability against Defendant.

4 **2. Official Actions and Sovereign Immunity**

5 Defendant also contends he is entitled to sovereign immunity for his official acts. The
6 Eleventh Amendment to the United States Constitution provides that: "[t]he Judicial power
7 of the United States shall not be construed to extend to any suit in law or equity, commenced
8 or prosecuted against one of the United States by Citizens of another State, or by Citizens or
9 Subjects of any Foreign State." Even when a state is not named in a suit, if public funds
10 would be used to pay a judgment, the Eleventh Amendment prohibits the suit. Edelman v.
11 Jordan, 415 U.S. 651, 663 (1974). Thus, unless Plaintiff's suit falls within the exceptions to
12 the Eleventh Amendment, sovereign immunity prevents the suit from proceeding.

13 In Fitzpatrick v. Bitzer, 427 U.S. 445 (1976), the Court allowed Congress to abrogate
14 state immunity, and thus subject states to retrospective damage suits, when Congress acts
15 within its Fourteenth Amendment power. Also, in Ex parte Young, 209 U.S. 123 (1908), the
16 Supreme Court created an exception to a state official's Eleventh Amendment immunity in
17 suits "challenging the constitutionality of a state official's action[.]" Pennhurst State Sch. and
18 Hosp. v. Halderman, 465 U.S. 89, 101 (1984). The Ex parte Young exception to the
19 Eleventh Amendment provides that "when a plaintiff brings suit against a state official
20 alleging a violation of federal law, the federal court may award prospective injunctive relief
21 that governs the official's future conduct[.]" Natural Res. Def. Council v. Cal. Dep't of
22 Transp., 96 F.3d 420, 422 (9th Cir. 1996). This is true even when the injunction would have
23 "an ancillary effect on the state treasury." Quern v. Jordan, 440 U.S. 332, 337 (1979).

24 Here, Plaintiff seeks damages and injunctive relief. While 42 U.S.C. § 1983 was
25 passed pursuant to the Fourteenth Amendment, it did not abrogate state sovereign immunity.
26 Quern, 440 U.S. at 341. Therefore, the Eleventh Amendment bars Plaintiff's claims for
27 damages. On the other hand, the Ex parte Young doctrine provides that the aspects of
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Plaintiff's suit which seek injunctive relief must be allowed to continue. Defendant's Motion for Summary Judgment will be granted on those claims seeking damages, but will be denied for Plaintiff's claims seeking injunctive relief.

3. Failure to State A Claim

Defendant also argues that Plaintiff failed to state a claim upon which relief can be granted. Defendant raises three grounds for dismissal: (1) Defendant was only following established law and policy; (2) Plaintiff had no possessory interest in the money until he is released; and (3) punitive damages are not applicable. [Doc. # 67 (Mot. Summ. J.) at 8-11.]

Defendant's first argument has already been addressed in the Court's discussion of qualified immunity. Defendant's second argument runs contrary to the Ninth Circuit's remand in this case. In this Court's order of March 18, 2003, Plaintiff's due process claim was dismissed because he had no possessory interest in his discharge account until he is released from prison. [Doc. # 30 (Order) at 4.] Because of the unlikelihood of Plaintiff ever walking out of prison, though, the Ninth Circuit rejected this argument. [Doc. # 35 (Order) at 2.] Defendant's argument that Plaintiff has failed to state a claim for punitive damages does have merit, however. In Smith v. Wade, 461 U.S. 30, 56 (1983) the Supreme Court held that in § 1983 cases, punitive damages can only be awarded when "the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." As Plaintiff has not demonstrated the Wade elements of a punitive damages claim, summary judgment for Defendant will be granted.

C. Sua Sponte Motion for Summary Judgment

There are no factual disputes in this case. The only remaining claim is whether Plaintiff is entitled to injunctive relief prohibiting Defendant from maintaining a discharge account in light of the fact that in all likelihood Plaintiff will never be released from prison. When "there is no genuine dispute respecting a material fact essential to the proof of movant's case," a court may enter a sua sponte motion for summary judgment. Buckingham

1 v. United States, 998 F.2d 735, 742 (9th Cir. 1993) (quoting Cool Fuel, Inc. v. Connett, 685
2 F.2d 309, 311 (9th Cir. 1982)). "However, a litigant must be given reasonable notice that the
3 sufficiency of his or her claim will be in issue: 'Reasonable notice implies adequate time to
4 develop the facts on which the litigant will depend to oppose summary judgment.'" Id.
5 (quoting Portsmouth Square v. Shareholders Protective Comm., 770 F.2d 866, 869 (9th Cir.
6 1985)).

7 In Zuther v. State, 199 Ariz. 104, 111, 14 P.3d 295, 302 (Ariz. 2000), the Arizona
8 Supreme Court recognized that prisoners have a statutory property interest in wages earned
9 while in prison. Regarding the withholding of money to fund prisoner discharge accounts,
10 the court said that due process is not violated because there is no constitutional right to
11 possess wages earned in prison while incarcerated. Id. The court reasoned that because
12 Zuther would be released from prison and receive the proceeds of the discharge account then,
13 there was no due process issue. Id.

14 The Court recognizes the Ninth Circuit's distinction that Zuther involved an inmate
15 who was released and thus had access to the discharge account while this case involves an
16 inmate who will almost certainly spend the rest of his life in prison and will never have
17 access to the funds. However, Zuther's analysis is consistent the Supreme Court's ruling in
18 Meachum v. Fano, 427 U.S. 215, 224 (1976), where the Court said that a valid conviction
19 strips a convict of fourteenth amendment rights and allows a state to subject a prisoner to the
20 "rules of its prison system so long as the conditions of confinement do not otherwise violate
21 the Constitution." While a prisoner has no constitutional property rights, Arizona has created
22 property rights in wages by providing for payment, spending, and saving. A.R.S. § 31-254
23 provides that inmates are to be paid for their labor and specifies how their wages are to be
24 administered. When a state-created property interest is litigated, the Ninth Circuit has ruled
25 that due process only applies to protect against arbitrary state actions. Harris v. Jacobs, 621
26 F.2d 341, 342 (9th Cir. 1980).

1 Here, it is difficult to find ADC's mandatory withholding arbitrary. ADC deducts the
2 requisite amount of funds from every prisoner's wages no matter if they are incarcerated for
3 a year, 200 years, or awaiting a death sentence. This practice then, is a rule of the prison
4 system that Meachum subjects a prisoner to as a result of a valid conviction. Thus, it appears
5 that Plaintiff's due process rights are not violated by the withholding.

6 Additionally, such a conclusion is supported by the decisions of other courts. In
7 Williamson v. Goord, 2003 WL 23101784, *3-4 (W.D.N.Y. 2003), the district court upheld
8 discharge accounts for prisoners who had no opportunity of release. The court recognized
9 that while there is a limited property right in wages, there is no present possessory interest.
10 Id. at *3. Also, the court noted the wide discretion the prison system exercised in allowing
11 inmates access to their wages. Id. at *4. While the inmates had to be paid, the prison system
12 retained the authority to withhold all wages until the prisoner was released. Id. In Rochon
13 v. Louisiana State Penitentiary Inmate Account, 880 F.2d 845, 846 (5th Cir. 1989), the Fifth
14 Circuit was presented with an inmate serving a life sentence who was challenging policies
15 which placed half of his wages in a savings account available only for limited uses while
16 incarcerated with the balance payable on release. Because the property interest in the wages
17 was created by statute, the Court said that "the nature of his property interest in [his wages]
18 may be defined by the reasonable provisions of that legislation." Id.

19 As discussed above, Plaintiff's property interest in his wages is created by statute. Per
20 Rochon's reasoning, that interest is subject to the statutes creating it. Moreover, the Director
21 of the ADC retains significant authority over inmate funds. Department Order 905.04.1.1.3
22 and 4 provide the Director with final authority over all inmate purchases. This is illustrative
23 of the discretion relied upon by the Williamson Court.

24 Pursuant to the foregoing analysis, this Court is inclined to deny injunctive relief to
25 the Plaintiff. However, as required by Buckingham, notice must be given to the parties. The
26 Court will order simultaneous briefing of the issue.

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CONCLUSION

Because it was reasonable to believe that Defendant's conduct was lawful, qualified immunity protects Defendant from personal liability. Sovereign immunity protects Defendant from liability for his official acts where Plaintiff seeks damages. However, sovereign immunity does not insulate Defendant against prospective injunctive relief. The parties will be required to submit simultaneous briefing on whether Defendant's continued enforcement of A.R.S. § 31-237 against Plaintiff should be enjoined.

Accordingly,

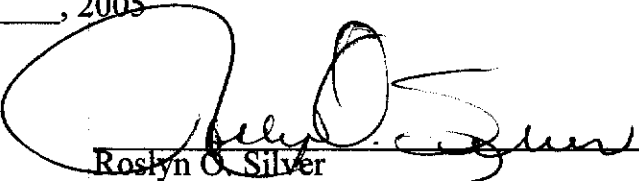
IT IS ORDERED that Defendant's Motion for Summary Judgment (Doc. # 67) is **GRANTED** regarding Defendant's personal liability and those official actions where damages are sought.

IT IS FURTHER ORDERED that, there being no just cause for delay, the Clerk shall enter judgment in favor of Defendant on such charges.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment (Doc. # 67) is **DENIED** regarding Plaintiff's claim for injunctive relief.

IT IS FURTHER ORDERED that parties simultaneously brief whether an injunction should be granted. Parties will have 30 days from the signing of this Order to submit their initial brief and 30 days thereafter to respond to the opposing party's memorandum.

DATED: 8/2, 2005


Roslyn O. Silver
United States District Judge